IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH
AT BILASPUR

Single Bench

CRIMINAL APPEAL NO. : 828 /2004

APPELLANT (IN JAIL) : Shailendra Kumar ,
Aged about 21 years,
S/o. - Shivram Nai,
R/O-village- Chhachhanpahari
P.S.- Ambagarh Chowki
Distt. - Rajnangaon (C.G.)

3655/04
filed on 28/09/04
by Shri S.S. Mishra Advocate

D.R. to D.R.(J)
28/09/04
4.00 P.M.

VERSUS

RESPONDENT : State of Chhattisgarh
Through-Station Officer,
Police station- Ambagarh Chowki
District - Rajnandgaon (C.G.)

RECEIVED COPY
28/9/04
Bilaspur

CRIMINAL APPEAL UNDER SECTION - 374 OF THE CODE OF CRIMINAL PROCEDURE

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(28)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Criminal Appeal No. 828 of 2004

Appellant : Shailendra Kumar,
aged about 21 years, S/o. Shivram Nai,
R/o. village Chhachhanpahari,
P.S. Ambagarh Chowki, Distt.-
Rajnandgaon (Chhattisgarh)

Versus

Respondent : State of Chhattisgarh,
Through: Station House Officer,
Police Station Ambagarh Chowki
Distt. – Rajnandgaon (Chhattisgarh)

Present:
Shri Hemant Kumar Gupta, counsel for the appellant.
Shri G.D. Vaswani, G.A. for the State/respondent.

ORAL JUDGMENT
(29th May 2007)

Dhirendra Mishra, J

This appeal is directed against the judgment dated 23.09.2004 passed by Additional Sessions Judge, Rajnandgaon in S.T. No. 50/2004 whereby the learned trial Court after holding the accused/appellant guilty under Section 376 of the IPC sentenced him to undergo RI for seven years and to pay a fine of Rs. 500/-, in default of payment of fine to further undergo RI for three months.

Case of the prosecution, in brief, is that 7-8 months prior to 09.01.2004, when the report of Ex.P-1 was lodged, accused had

GRPRJ – FS/246 – 2/2007 – 50,000.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(26)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित-आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

taken the prosecutrix to village Chhachhanpahari to her maternal uncle's home in the eve of Teeja festival, there the appellant came near her, caught her, took her in his arms and forced her for sexual intercourse. The prosecutrix objected and said as to who will be responsible if something happens. On this accused/ appellant answered that nothing will happen, he shall marry her and made sexual intercourse. In this way he repeated this act whenever she was alone. While he was accompanying her to leave her in her home, on the way also she was subjected to sexual intercourse and all the time he promised that he shall be marrying her and as a result of this physical relationship the prosecutrix became pregnant. She disclosed about her pregnancy to her mother who in turn narrated the same to other villagers and thereafter the prosecutrix along with her mother and elder uncle went to the police station and lodged the report of Ex. P-1.

During investigation site plan of Ex. P-3 was prepared, birth & death report of village Munjalkala was seized from Kotwar Lagnu Ram (P.W.-4) vide Ex.P-4. Accused was sent for medical examination vide Ex.P-6 to Medical Officer, Government Hospital, Ambagarh Chowki where Dr. R.K. Pasi examined the accused and gave his report of Ex.P-1. The prosecutrix was also sent for medical examination vide Ex.P-7 to Women Medical Officer, Government Hospital Ambagarh Chowki where Dr. Shail Khare examined her

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(27)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

and gave her report of Ex.P-10. The Obstetric USG report of the prosecutrix is Ex.P-9.

After completing investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Ambagarh Chowki who in turn committed the case to the Court of Sessions Judge, Rajnandgaon and the same was received by learned Additional Sessions Judge on transfer for trial

The prosecution in order to establish the charge against the accused/appellant examined eight witnesses in all. Thereafter statement of accused under Section 313 of the Cr.P.C. was recorded in which the appellant denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication with an intention to exert pressure for marrying.

Learned trial Court after hearing counsel for the respective parties convicted and sentenced the appellant as mentioned hereinabove.

Learned counsel for the appellant submits that the prosecution had failed to establish by leading reliable evidence that the age of prosecutrix was less than 16 years on the date of incident, as the prosecutrix was not subjected to radiological examination for ascertaining her age and only on the basis of entry

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(90)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -५-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

in the birth & death register maintained by the Kotwar of the concerned village the age of the prosecutrix has been assessed to be less than 16 years. He further submits that the report of incident has been lodged after 7-8 months of the alleged incident and the explanation for delay in lodging First Information Report is not convincing. The delay itself causes serious doubt regarding allegation of rape and this aspect has been ignored by the trial Court. He further argued that no independent witness of Panchayat has been examined and even if the evidence of the prosecutrix is accepted in its totality, then also it is evident that she had been consenting party and therefore conviction of the appellant under Section 376 of the IPC cannot be sustained.

On the other hand learned counsel for the State submitted that age of the prosecutrix has been rightly assessed to be less than 16 years on the date of incident by the learned trial Court and the said finding is based on the document of Ex.P-8C being the copy of birth & death register maintained by the Kotwar of the concerned village. The above document of Ex.P-8C has also been proved from the original birth & death register by the Kotwar concerned, who has made entries in the said register, and from the above evidence it is clear that the prosecutrix was less than 16 years of age on the date of incident which is prior to 7-8 months from 09.01.2004. He further submits that the prosecutrix in her deposition has categorically stated that father of the accused is her

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(21)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

maternal uncle, the accused had taken her to his home and thereafter he persuaded her for sexual intercourse on the promise of marriage and continued to have relationship on that pretext as a result of which she became pregnant and thereafter when she was carrying four months pregnancy the report was lodged. The version of the prosecutrix is duly corroborated by the medical evidence, as on medical examination the pregnancy of the prosecutrix has been confirmed, who subsequently delivered a female child. He further submits that the defence of consent is not available, as the prosecutrix was less than 16 years of age at the time of incident.

I have heard learned counsel for the respective parties and perused the record.

So far as the age of prosecutrix at the time of incident is concerned, as per allegations of the prosecution and statement of the prosecutrix, the incident occurred some 7-8 months prior to 09.01.2004 when the report was lodged and for establishing the age of the prosecutrix, village Kotwar Lagnu Ram of village Munjalkala has been examined as P.W.-4 who has stated that he was Kotwar of Village Munjalkala in the year 1967. He brought birth and death report form in its original and in the said report, at entry No.2 dated 17.04.1989 on the basis of information of Krishna, father of prosecutrix, her date of birth was 16.04.1989, was recorded. He has further stated that he recognises the prosecutrix as also the accused. The elder uncle of the prosecutrix

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

30

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

had convened a meeting of important persons of the village and on enquiry the prosecutrix has stated that she is five months pregnant and accused is responsible for her pregnancy. At that time accused was also present who denied that he was responsible for her pregnancy and only after denial of the accused, report was lodged in the police station. In the cross examination of this witness the defence was not able to elicit anything which impeaches the veracity of entry of date of birth in the birth and death register of the prosecutrix. The entries were made on the very next day of the birth of the prosecutrix by a public servant who is responsible to make such entries in the birth and death register and being a public document the same is admissible in the evidence. Therefore the trial Court has not committed any illegality in placing reliance upon the entry of date of birth in the birth & death register and assessed the age of the prosecutrix as less than 16 years of age on the date of incident.

So far as the commission of offence of rape by the appellant is concerned, the prosecutrix, P.W.-3 has stated in her deposition that last year in the eve of Teeja festival she had gone to village Chhachhanpahari to her maternal uncle's home and the third day of her stay there, the accused had developed relationship with her. He caught hold of her hand, took her inside and proposed for sexual intercourse. On his proposal, she said that if something happens, then she shall complain to her parents whereupon the

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(31)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —7—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

accused asked her not to disclose to her parents and if something happens he shall marry her and thereafter accused asked for intercourse. She has further stated that she stayed in village Chhachhanpahari for two months and during this period accused continued to have physical relationship with her in his own house as a result of which she became pregnant. This witness has been subjected to lengthy cross examination by the defence counsel, however from the whole cross examination, the defence could not elicit anything which makes the version of the prosecutrix unreliable or untrustworthy.

From perusal of the cross examination of this witness it is evident that even no suggestion is made on behalf of the defence that the accused did not have any physical relationship with the prosecutrix and that she had implicated the accused to exert pressure upon him to marry her. Moreover, version of the prosecutrix is corroborated from the statement of P.W.4, Kotwar (Lagnu Ram) who is an independent witness, P.W.-5 Mallu as also from the evidence of P.W.-8 Dr. Vimal Khunte who has proved the document of Ex.P-10 being the medical report given by Dr. Shail Khare in which the pregnancy of 22 weeks of the prosecutrix has been confirmed. The version of the prosecutrix is also corroborated by the First Information Report of Ex.P-2.

So far as the argument of the counsel for the defence that the prosecutrix was a consenting party is concerned, it has already

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

32

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	-8-	

been held in the foregoing paragraphs that the prosecutrix was less than 16 years of age on the date of incident and therefore consent of the prosecutrix is irrelevant and meaningless.

On the basis of aforesaid discussion, this Court is of the considered opinion that the prosecution has been able to prove the charge against the appellant beyond reasonable doubt and the trial Court has not committed any illegality or infirmity in convicting the appellant guilty under Section 376 of the IPC and sentencing him as mentioned above. The appeal being devoid of substance is liable to be dismissed and the same is hereby dismissed.

Sd/-
DHIRENDRA MISHRA
Judge